latter tests secondary, as indications only of where the ultimate power of control over servants rests, which accordingly becomes determining in the decision of all these actions. Though the reasons upon which the majority in the principal case rested their opinion are not clearly defined, it is evident that they decided with regard to the location of the directing power upon the facts as found by the lower court. The test observed is cited in *Muldoon v. Fireproofing Co.*, 134 N. Y. App. Div. 453, as the primary one for application in such situations. That the disagreement of the dissenting judges is solely upon the application of legal rule to the facts is apparent from the absence of argument in that opinion. The conditions in the instant case are similar to those in *Schmedes v. Deffaa*, 138 N. Y. Supp. 931, where the intermediate party was held not liable. Our later decision, however, may be justified on the basis that the facts show the power of control to have been in the trucking company, and hence it was their business rather than that of the excavation company in which the driver was engaged when the accident occurred, though incidentally the contract of the sub-contractors was being furthered. See 11 MICH. L. REV. 414.

MASTER AND SERVANT—SCOPE OF EMPLOYMENT—WHEN RESUMED AFTER DEPARTURE.—The driver of defendant's truck, after making the last delivery for the day, drove the truck to his home and used it for moving furniture and other household duties for himself. When he was returning defendant's truck to defendant's garage six hours later he negligently ran into and injured plaintiff. In an action for damages against the employer it was *held*, the servant was not acting within the scope of his employment and the master was not liable. *Cannon v. Goodyear Tire and Rubber Co. of California* (Utah, 1922), 208 Pac. 519.

It was conceded in the case that there had been a clear departure from the scope of the servant's employment. The precise question was whether or not the servant had resumed the service of the master upon starting back to the garage where it was his duty to leave the car for the night. The great weight of authority is with the principal case in holding that when there has been a departure the service of the master is not resumed until the servant has, at least, reached the place where the deviation occurred or a corresponding place. MECHEM, § 1907; HUDDY ON AUTOMOBILES, § 284; BERRY ON LAW OF AUTOMOBILES, §§ 1054, 1072, *seq. Fleischner v. Durgin*, 207 Mass. 435; *Ludberg v. Barghoorn*, 73 Wash. 476; *Solomon v. Trust Co.* (Penn.) 100 Atl. 534; *Cavanagh v. Dinsmore*, 12 Hun (N. Y.) 465; *Symington v. Sipes*, 121 Md. 313; *Danforth v. Fisher*, 75 N. H. 111. Many cases go even farther and seem to lay down the rule that in order to be considered within the scope of his employment the servant must have reached the destination to which he was bound when the deviation occurred. *Colwell v. Aetna Bottle and S. Co.*, 33 R. I. 531; *Hartnett v. Gryzmish*, 218 Mass. 258; *Brinkman v. Zuckerman*, 192 Mich. 624. Little authority can be found to the effect that the servant resumes his employment when he starts back to the service of his master. *Missouri, etc., Ry. Co. v. Edwards* (Tex.), 67 S. W. 891; *Chicago, etc., Co. v. McGinnis*, 86 Ill. App. 38; *Bar-*

more v. Vicksburg, etc., Ry. Co., 85 Miss. 426. These cases have been severely criticised, MECHEM, § 1907 *seq.*, and are in the minority. Note to *Barmore v. R. R., supra,* in 70 L. R. A. 627. In this case an engineman of defendant's had been furnished with a hand-car for the purpose of gathering chips to run his engine. Having gone beyond the location of the chips at the request of a friend, clearly a departure, and while on his way back to that place, he ran into and injured plaintiff. In spite of the fact that he had not yet reached the location of the chips, the court held that he was acting within the scope of his employment and the master was liable. It would seem that the able dissenting opinion of Whitfield, Ch. J., represents the overwhelming weight of authority, which is in accord with the principal case.

NEGLIGENCE—RES IPSA LOQUITUR.—While drinking "Whistle," the plaintiff was injured by broken glass in the bottle. He sued the defendant, who put up the beverage, for negligence. To support his case he relied on the doctrine of *res ipsa loquitur.* The defendant sought to rebut the presumption of negligence raised thereby by showing that under its process of bottling and inspection there could be no broken glass in its bottles when put on the market. When a judgment was given against the defendant on a jury verdict, he appealed, claiming that by his evidence he had rebutted the presumption raised by the doctrine of *res ipsa loquitur,* and therefore the verdict was unsupported by evidence. *Held,* that under the circumstances the question was properly left to the jury. *Goldman & Freiman Bottling Co. v. Sindell* (Md., 1922), 117 Atl. 866.

Where all the facts attending an injury are disclosed and nothing remains for inference, no presumption can be indulged in and the doctrine of *res ipsa loquitur* has no application. *Gibson v. International Trust Co.,* 177 Mass. 100. A clear example of this arises when a defendant shows that the injury was due to the fault of a third party. But if the defendant merely offers general evidence tending to show that he has exercised due care, it would seem only fair that the question should be left to the jury. For even if it be conceded that the plan of the manufacturing process shows proper diligence, this does not preclude negligence on the part of the defendant or his agents in carrying it out. Accordingly, on facts similar to those in the principal case a court making a like holding said, in *Davis v. Van Camp Packing Co.* (Iowa), 176 N. W. 382, that while the defendant had shown a proper process of manufacture, "It does not appear that the method was always adhered to by the defendant's employees." The time that it was not adhered to might be the cause of the injury in question. In *Crigger v. Coca-Cola Bottling Co.,* 132 Tenn. 545, another case squarely in point, the court held that the question of negligence should be left to the jury, but that since the jury had found as a fact that there was no negligence the judgment should not be overthrown. Another recent authority is *Riecke v. Anheuser-Busch Brewing Assn.* (Mo.), 227 S. W. 631, in which the only proof of negligence was that a bottle exploded, injuring the plaintiff, while the defendant was showing her through his bottling plant.